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# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
Executive Director

### Division of Oil, Gas and Mining

JOHN R. BAZA  
Division Director

Outgoing

CO150015

# 3502

OK

June 28, 2010

#### CERTIFIED MAIL

7005 2570 0000 4801 6430

John A. Gefferth  
Consolidation Coal Company  
P. O. Box 566  
Sesser, Illinois 62884

Subject: Findings of Fact, Conclusions, and Order for Violation #10048, Consolidation Coal Company, Emery Deep Mine, C/015/0015

Dear Mr. Gefferth:

On June 17, 2010, an Informal Conference was held to review the assessment for Violation #10048. As a result of a review of all pertinent data and facts, including those presented in the Informal Conference, the attached document constitutes the findings of fact, conclusions, and order.

Within fifteen (15) days of your receipt of this letter, you or your agent may make a written appeal to the Board of Oil, Gas and Mining. To do so, you must escrow the assessed civil penalties with the Division within thirty (30) days of receipt of this letter, but in all cases prior to the Board Hearing. Failure to comply with this requirement will result in a waiver of your right of further recourse.

If no timely appeal is made, this assessed civil penalty of \$550.00 must be tendered within thirty (30) days of your receipt of this letter. Please remit payment to the Division of Oil, Gas and Mining, c/o Vickie Southwick at the address listed below.

Sincerely,

John R. Baza  
Director

Assessment Conference Officer

JRB/vs

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LETTER DATED 6/28/2010  
INFORMAL CONFERENCE  
CONSOLIDATION COAL COMPANY  
(Endor) EMERY DEEP MINE  
C0150015  
(Restr) JOHN GEFFERTH  
(Endor)

Total Postage & Fees | €

JOHN A. GEFFERTH  
P. O. BOX 566  
SESSER, ILLINOIS 62884

See reverse for instructions

**BEFORE THE DIVISION OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

**IN THE MATTER OF THE  
INFORMAL ASSESSMENT  
CONFERENCE for NOTICE OF  
VIOLATION AND PROPOSED  
ASSESSMENT; VIOLATION No.  
10048, CONSOLIDATION COAL  
COMPANY, EMERY DEEP  
MINE, C/015/0015, EMERY  
COUNTY, UTAH**

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**FINDINGS of FACT,  
CONCLUSIONS OF LAW  
AND ORDER**

**CAUSE NO. C/015/0015**

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On June 17, 2010, the Division of Oil, Gas and Mining (Division) held an Informal Assessment Conference as provided for by Rule R64-401-700 of Utah Administrative Code in response to the written request by Consolidation Coal Company (Consol) to review the fact of violation and amount assessment for Notice of Violation 10048 (NOV), issued to it on March 11, 2010, and modified on March 15, 2010, for operations at the Emery Deep Mine, C/015/0015, Emery County, Utah.

The Division in its Notice of Violation found that rule R645-301-528.333 had been violated. This rule specifies restrictions for the deposit or disposal of noncoal mine waste. The Division assessed a fine of \$2,200.00.

John R. Baza, Director Division of Oil, Gas and Mining served as the hearing officer. The hearing was conducted as an informal adjudicative proceeding. Karl R. Houskeeper, Division Environmental Scientist, presented the facts and arguments in support of the Notice of Violation. Joe C. Helfrich, Assessment Officer, presented the rationale for determination of the assessment amount. Daron Haddock, Coal Program Supervisor, and Steve Demczak, Environmental Scientist were also in attendance from the Division. John Gefferth and Ian McClain represented Consol and presented the position and arguments on its behalf.

No recording or transcript of the conference was made. Based on the information provided at the conference, the statements presented by those speaking, and on information in the files of the Division the following Findings and Conclusions were made.

## **FINDINGS OF FACT**

1. The Request for an informal assessment conference was delivered to the Division on May 11, 2010.
2. Notice of the Informal Assessment Conference was provided as required on May 13, 2010.
3. Consol did not contest the fact of the violation in the conference, rather the high number of points assessed. Consol indicated that the initial inspection on March 11, 2010, conducted by Mr. Houskeeper occurred shortly after the snow cover in the area had recently melted, and litter that had accumulated over the winter months was still present around the mine area.
4. Consol explained that immediately after the NOV was issued, steps were taken to clean up litter, but prior to the return inspection on March 16, 2010, by Mr. Houskeeper, additional litter had been deposited in the same area.
5. Following Mr. Houskeeper's return inspection on March 16<sup>th</sup>, Consol immediately performed another clean up of the area, and Mr. Houskeeper found the site in compliance later in the day on March 16, 2010. Mr. Houskeeper terminated the NOV on that same day.

## **CONCLUSIONS OF LAW**

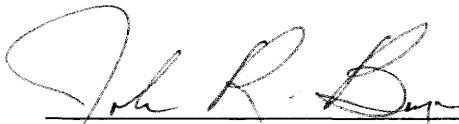
1. Non-coal waste was present during Mr. Houskeeper's initial inspection, and the NOV was appropriately issued. The fact of the violation is appropriate.
2. Because an event occurred for which a violated standard is designed to prevent, the assessed point value should remain at 20 points.
3. Based on Consol's explanations, and their actions following Mr. Houskeeper's initial inspection, the violation was caused by fault of the operator, but it was not a result of of reckless, knowing, or intentional conduct. The maximum assessed point value should be 15 or less.
4. Based on Consol's explanations, the operator took normal actions for compliance, and it did not result in extended compliance by the operator. The maximum allowable point value for degree of good faith is -10 points.

## ORDER

NOW THEREFORE, it is ordered that:

1. The fact of the violation is upheld.
2. The proposed assessment is reduced from a total of 40 points to a new total of 25 points. The assessed value of the violation is now finalized at \$550.00.

SO DETERMINED AND ORDERED this 28<sup>th</sup> day of June 2010.



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John Baza, Director  
Division of Oil, Gas and Mining

UTAH DIVISION OF OIL, GAS AND MINING  
WORKSHEET FOR FINAL ASSESSMENT OF PENALTIES

COMPANY: Consolidation Coal Company  
PERMIT: C/015/0015  
VIOLATION: 10048

ASSESSMENT CONFERENCE OFFICER: John R. Baza

	Proposed Assessment	Final Assessment
(1) History/Previous Violations	<u>0</u>	<u>0</u>
(2) Seriousness	<u>20</u>	<u>20</u>
(3) Negligence	<u>20</u>	<u>15</u>
(4) Good Faith	<u>0</u>	<u>-10</u>
Total Points	<u>40</u>	<u>25</u>

TOTAL ASSESSED FINE \$550.00

NARRATIVE: The Conference Officer reduced the negligence points by 5 after hearing an explanation that the initial inspection occurred after a spring thawing had exposed substantial litter that had collected over the winter months. The Conference Officer also allowed for -10 good faith points after hearing explanation that clean-up had occurred following the initial inspection, but additional litter had collected prior to the follow-up inspection.